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FEB 25 2004

OFFICE OF PETITIONS

In re Application of
Byrnes & Sullivan
Application No. 10/660,411
Filed: September 10, 2003
Attorney Docket No. 35693.830003.US0
For: REDUCED SKIN ABRASION SHOE

:
: DECISION REFUSING
: STATUS UNDER
: 37 CFR 1.47(b)
:
:

This is in response to the petition under 37 CFR 1.47(b), filed January 30, 2004.

The petition is dismissed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on September 10, 2003 without an executed oath or declaration. Accordingly, on December 2, 2003, a "Notice to File Missing Parts of Nonprovisional Application" (Notice) was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

In response, a declaration executed by Jerry Edwards, president of DashAmerica, Inc., a company with proprietary interest in the invention, the surcharge, the petition fee, and the instant petition were filed on January 30, 2004. The petition sets forth the last known address of each non-signing inventor and explains that each inventor received the application papers, but did not respond to the request that he/she sign the oath or declaration for the patent application.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
- (2) an acceptable oath or declaration;
- (3) the petition fee;
- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest; and
- (6) proof of irreparable damage.

Applicant lacks item (2) set forth above.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. The declaration signed by Mr. Edwards does not list Ms.

Byrnes and Mr. Sullivan's information. The declaration must set forth each inventor's residence, citizenship and mailing/ post office address. As listing the citizenship for each inventor is a statutory requirement under 35 USC 115, it cannot be waived. An oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by the Rule 1.47 applicant on behalf of Ms. Byrnes and Mr. Sullivan is REQUIRED. See MPEP 409.03(b).

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this decision may be directed to the undersigned at (703) 308-6712.



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